

**ASSEMBLY BILL**

**No. 939**

---

**Introduced by Assembly Member Soto**

February 22, 2007

---

An act to amend Sections 44830.1 and 45122.1 of the Education Code, relating to school employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, as introduced, Soto. Schools: employment: disqualifications.

Existing law prohibits a school district from hiring or retaining in employment a person who has been convicted of a violent or serious felony, except if that person has obtained a certificate of rehabilitation and pardon or as otherwise specified, or a specified sexual offense. The Department of Justice is required to notify a school district if it discovers that an employee has been convicted of a qualifying offense. Upon receipt of that notice, an employee is immediately suspended without pay, and, upon receipt of written electronic notification, an employee is terminated, unless the department withdraws its notification.

This bill also would prohibit a school district from hiring or retaining in employment a person who has been convicted of a felony involving animal cruelty, except if that person has obtained a certificate of rehabilitation and pardon, and would make additional conforming changes to existing law. A school district would be authorized to ask applicants for employment whether they have been convicted of a violent or serious felony, a felony involving animal cruelty, or a specified sex offense in order to comply with the provisions prohibiting the employment of a person convicted of one of those offenses.

By requiring a school district to remove from employment any individual currently employed by the district who has been convicted

of a felony involving animal cruelty for an act committed on or after January 1, 2008, a state-mandated local program would be imposed.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 44830.1 of the Education Code is  
2 amended to read:

3 44830.1. (a) In addition to any other prohibition or provision,  
4 no person who has been convicted of a violent ~~or~~, serious felony,  
5 *or felony involving animal cruelty*, shall be hired by a school  
6 district in a position requiring certification qualifications or  
7 supervising positions requiring certification qualifications. A school  
8 district shall not retain in employment a current certificated  
9 employee who has been convicted of a violent or serious felony,  
10 *or a felony involving animal cruelty*, and who is a temporary  
11 employee, a substitute employee, or a probationary employee  
12 serving before March 15 of the employee's second probationary  
13 year. ~~If any~~ a conviction is reversed and the formerly convicted  
14 person is acquitted of the offense in a new trial, or the charges are  
15 dismissed, this section does not prohibit his or her employment  
16 thereafter.

17 (b) This section applies to any violent or serious offense ~~which~~  
18 *that*, if committed in this state, would have been punishable as a  
19 violent or serious felony. *This section also applies to any offense*  
20 *involving cruelty to an animal that, if committed in this state, would*  
21 *have been punishable as a felony, as described in subparagraph*  
22 *(B) of paragraph (1) of subdivision (c).*

23 (c) (1) (A) For purposes of this section, a violent felony is ~~any~~  
24 a felony listed in subdivision (c) of Section 667.5 of the Penal  
25 Code ~~and~~, a serious felony is ~~any~~ a felony listed in subdivision (c)  
26 of Section 1192.7 of the Penal Code.

1 (B) For purposes of this section, a felony involving animal  
2 cruelty is any felony involving an act of cruelty to an animal that  
3 is expressly prohibited pursuant to Section 597 of the Penal Code  
4 or any other provision of Title 14 (commencing with Section 594)  
5 of Part 1 of the Penal Code and that was committed on or after  
6 January 1, 2008.

7 (2) For purposes of this section, a plea of nolo contendere to a  
8 serious or violent felony, *or a felony involving animal cruelty*,  
9 constitutes a conviction.

10 (3) For purposes of this section, the term “school district” has  
11 the same meaning as defined in Section 41302.5.

12 (d) When the governing board of ~~any~~ a school district requests  
13 a criminal record summary of a temporary, substitute, or  
14 probationary certificated employee, two fingerprint cards, bearing  
15 the legible rolled and flat impressions of the person’s fingerprints  
16 together with a personal description and the fee, shall be submitted,  
17 by any means authorized by the Department of Justice, to the  
18 Department of Justice.

19 (e) When the Department of Justice ascertains that an individual  
20 who is an applicant for employment by a school district has been  
21 convicted of a violent or serious felony, *a felony involving animal*  
22 *cruelty*, or for purposes of implementing the prohibitions set forth  
23 in Section 44836, ~~any~~ a sex offense, as defined in Section 44010,  
24 ~~or any~~ a controlled substance offense, as defined in Section 44011,  
25 the department shall notify the school district of the criminal  
26 information pertaining to the applicant. The notification shall be  
27 delivered by telephone or electronic mail to the school district.  
28 The notification to the school district shall cease to be made once  
29 the statewide electronic fingerprinting network is returning  
30 responses within three working days. The Department of Justice  
31 shall send by first-class mail or electronic mail a copy of the  
32 criminal information to the Commission on Teacher Credentialing.  
33 The Department of Justice may charge a reasonable fee to cover  
34 the costs associated with processing, reviewing, and supplying the  
35 criminal record summary required by this section. In no event shall  
36 the fee exceed the actual costs incurred by the department.

37 (f) Notwithstanding subdivision (a), a person shall not be denied  
38 employment or terminated from employment solely on the basis  
39 that the person has been convicted of a violent or serious felony,  
40 *or a felony involving animal cruelty*, if the person has obtained a

1 certificate of rehabilitation and pardon pursuant to Chapter 3.5  
2 (commencing with Section 4852.01) of Title 6 of Part 3 of the  
3 Penal Code.

4 (g) Notwithstanding subdivision (f), a person shall not be denied  
5 employment or terminated from employment solely on the basis  
6 that the person has been convicted of a serious felony that is not  
7 also a violent felony *or a felony involving animal cruelty* if that  
8 person can prove to the sentencing court of the offense in question,  
9 by clear and convincing evidence, that he or she has been  
10 rehabilitated for the purposes of school employment for at least  
11 one year. If the offense in question occurred outside this state, then  
12 the person may seek a finding of rehabilitation from the court in  
13 the school district in which he or she is a resident.

14 (h) Notwithstanding any other provision of law, when the  
15 Department of Justice notifies a school district by telephone or  
16 electronic mail that a current temporary employee, substitute  
17 employee, or probationary employee serving before March 15 of  
18 the ~~employee's~~ second probationary year *of the employee*, has been  
19 convicted of a violent or serious felony, *or a felony involving*  
20 *animal cruelty*, that employee shall immediately be placed on leave  
21 without pay. When the school district receives written electronic  
22 notification of the fact of conviction from the Department of  
23 Justice, the employee shall be terminated automatically and without  
24 regard to any other procedure for termination specified in this code  
25 or school district procedures unless the employee challenges the  
26 record of the Department of Justice and the Department of Justice  
27 withdraws in writing its notification to the school district. Upon  
28 receipt of written withdrawal of notification from the Department  
29 of Justice, the employee shall immediately be reinstated with full  
30 restoration of salary and benefits for the period of time from the  
31 suspension without pay to the reinstatement.

32 (i) An employer shall request subsequent arrest service from  
33 the Department of Justice as provided under Section 11105.2 of  
34 the Penal Code.

35 (j) Notwithstanding Section 47610, this section applies to a  
36 charter school.

37 (k) This section shall not apply to a certificated employee who  
38 applies to renew his or her credential when both of the following  
39 conditions have been met:

1 (1) The employee's original application for credential was  
2 accompanied by that person's fingerprints.

3 (2) The employee has either been continuously employed in  
4 one or more public school districts since the issuance or last  
5 renewal of his or her credential or his or her credential has not  
6 expired between renewals.

7 (l) Nothing in this section shall prohibit a county superintendent  
8 of schools from issuing a temporary certificate to any person  
9 described in paragraph (1) or (2) of subdivision (k).

10 (m) This section shall not prohibit a school district from hiring  
11 a certificated employee who became a permanent employee of  
12 another school district as of October 1, 1997.

13 (n) All information obtained from the Department of Justice is  
14 confidential. Every agency handling Department of Justice  
15 information shall ensure the following:

16 (1) No recipient may disclose its contents or provide copies of  
17 information.

18 (2) Information received shall be stored in a locked file separate  
19 from other files, and shall only be accessible to the custodian of  
20 records.

21 (3) Information received shall be destroyed upon the hiring  
22 determination in accordance with subdivision (a) of Section 708  
23 of Title 11 of the California Code of Regulations.

24 (4) Compliance with destruction, storage, dissemination,  
25 auditing, backgrounding, and training requirements as set forth in  
26 Sections 700 through 708, inclusive, of Title 11 of the California  
27 Code of Regulations and Section 11077 of the Penal Code  
28 governing the use and security of criminal offender record  
29 information is the responsibility of the entity receiving the  
30 information from the Department of Justice.

31 (o) *A school district may ask applicants for employment whether*  
32 *they have been convicted of a violent or serious felony, a felony*  
33 *involving animal cruelty, or a sex offense, as defined in Section*  
34 *44010, in order to comply with this section or Section 44836.*

35 SEC. 2. Section 45122.1 of the Education Code is amended to  
36 read:

37 45122.1. (a) In addition to any other prohibition or provision,  
38 no person who has been convicted of a violent or serious felony,  
39 *or a felony involving animal cruelty*, shall be employed by a school  
40 district pursuant to this chapter. A school district shall not retain

1 in employment a current classified employee who has been  
2 convicted of a violent or serious felony, *or a felony involving*  
3 *animal cruelty*, and who is a temporary, substitute, or a  
4 probationary employee who has not attained permanent status.

5 (b) This section applies to any violent or serious offense ~~which~~  
6 *that*, if committed in this state, would have been punishable as a  
7 violent or serious felony. *This section also applies to any offense*  
8 *involving cruelty to an animal that, if committed in this state, would*  
9 *have been punishable as a felony, as described in subparagraph*  
10 *(B) of paragraph (1) of subdivision (c).*

11 (c) (1) (A) For purposes of this section, a violent felony is ~~any~~  
12 *a felony listed in subdivision (c) of Section 667.5 of the Penal*  
13 *Code and a serious felony is* ~~any~~ *a felony listed in subdivision (c)*  
14 *of Section 1192.7 of the Penal Code.*

15 *(B) For purposes of this section, a felony involving animal*  
16 *cruelty is any felony involving an act of cruelty to an animal that*  
17 *is expressly prohibited pursuant to Section 597 of the Penal Code*  
18 *or any other provision of Title 14 (commencing with Section 594)*  
19 *of Part 1 of the Penal Code and that was committed on or after*  
20 *January 1, 2008.*

21 (2) For purposes of this section, the term “school district” has  
22 the same meaning as defined in Section 41302.5.

23 (d) When the Department of Justice ascertains that an individual  
24 who is an applicant for employment by a school district has been  
25 convicted of a violent or serious felony, *or a felony involving*  
26 *animal cruelty*, the department shall notify the school district of  
27 the criminal information pertaining to the applicant. The  
28 notification shall be delivered by telephone and shall be confirmed  
29 in writing and delivered to the school district by first-class mail.

30 (e) Notwithstanding subdivision (a), a person shall not be denied  
31 employment or terminated from employment solely on the basis  
32 that the person has been convicted of a violent or serious felony,  
33 *or a felony involving animal cruelty*, if the person has obtained a  
34 certificate of rehabilitation and pardon pursuant to Chapter 3.5  
35 (commencing with Section 4852.01) of Title 6 of Part 3 of the  
36 Penal Code.

37 (f) Notwithstanding subdivision (e), a person shall not be denied  
38 employment or terminated from employment solely on the basis  
39 that the person has been convicted of a serious felony that is not  
40 also a violent felony *or a felony involving animal cruelty* if that

1 person can prove to the sentencing court of the offense in question,  
2 by clear and convincing evidence, that he or she has been  
3 rehabilitated for the purposes of school employment for at least  
4 one year. If the offense in question occurred outside this state, then  
5 the person may seek a finding of rehabilitation from the court in  
6 the school district in which he or she is a resident.

7 (g) Notwithstanding any other provision of law, when the  
8 Department of Justice notifies a school district by telephone that  
9 a current temporary, substitute, or probationary employee who has  
10 not attained permanent status, has been convicted of a violent or  
11 serious felony, *or a felony involving animal cruelty*, that employee  
12 shall immediately be placed on leave without pay. When the school  
13 district receives written notification of the fact of conviction from  
14 the Department of Justice, the employee shall be terminated  
15 automatically and without regard to any other procedure for  
16 termination specified in this code or school district procedures  
17 unless the employee challenges the record of the Department of  
18 Justice and the Department of Justice withdraws in writing its  
19 notification to the school district. Upon receipt of written  
20 withdrawal of notification from the Department of Justice, the  
21 employee shall immediately be reinstated with full restoration of  
22 salary and benefits for the period of time from the suspension  
23 without pay to the reinstatement.

24 (h) Notwithstanding Section 47610, this section applies to a  
25 charter school.

26 (i) *A school district may ask applicants for employment whether*  
27 *they have been convicted of a violent or serious felony, a felony*  
28 *involving animal cruelty, or a sex offense, as defined in Section*  
29 *44010, in order to comply with this section or Section 45123.*

30 SEC. 3. If the Commission on State Mandates determines that  
31 this act contains costs mandated by the state, reimbursement to  
32 local agencies and school districts for those costs shall be made  
33 pursuant to Part 7 (commencing with Section 17500) of Division  
34 4 of Title 2 of the Government Code.